

ORIGINAL

BEFORE THE
Federal Communications Commission
WASHINGTON, D. C.

In the Matter of)
)
Implementation of Section 19)
of the Cable Television)
Consumer Protection and)
Competition Act of 1992)
)
)
Annual Assessment of the)
Status of Competition in the)
Market for the Delivery of)
Video Programming)

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CS Docket No. 94-48

To: The Commission

REPLY COMMENTS OF COMEDY PARTNERS

Comedy Partners ("Partners"), by its attorneys, hereby submits its reply comments in the above captioned proceeding.¹ In these reply comments, Partners will respond to certain allegations regarding Partners' video programming service made by Consumer Satellite Systems, Inc., Programmers Clearing House, Inc. and Satellite Receivers, Ltd. (collectively, the "Packagers") and by the National Rural Telecommunications Cooperative ("NRTC") in their initial comments in this proceeding. As set forth below,

¹ In the Matter of Implementation of Section 19 of the Cable Television Consumer Protection and Competition Act of 1992, Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Notice of Inquiry, CS Docket No. 94-48, FCC 94-119 (rel. May 19, 1994) ("Notice").

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the allegations of the Packagers and NRTC are misleading and inaccurate.

I. INTRODUCTION

Partners is in the business of producing and distributing a satellite/cable video programming service known as "COMEDY CENTRAL" (referred to herein as "Comedy"). Comedy currently is available to approximately 31,000,000 homes through cable television systems and approximately 1,000,000 homes with satellite dishes.

Comedy was created in 1991 by the merger of two pre-existing programming services each devoted exclusively to comedy programming. Comedy experienced significant growth in its first two years of existence reaching approximately 26,000,000 subscribers by the end of September of 1992. After the effective date of the Television Consumer Protection and Competition Act of 1992 ("Cable Act"), however, Comedy's growth slowed substantially, adding only 5,000,000 additional subscribers. In part, this diminished growth was due to the unavailability of channel capacity caused by such factors as the "must-carry" provisions of the Cable Act and technological limitations.

In either case, it is in the best interests of Comedy to conduct business with as many outlets as possible so as to maximize its revenue base in the current channel capacity environment. It does not serve Partners' interests to charge distributors excessive prices which make Comedy an unattractive programming choice for the Packagers or anyone else.

II. PARTNERS' RESPONSE TO CERTAIN INACCURATE INFORMATION PROVIDED BY THE PACKAGERS AND NRTC

A. Rates

The Packagers included as part of their initial comments a chart which refers to rate differentials charged by Comedy, and other programming distributors, to cable operators versus those charged to HSD operators. Insofar as the chart refers to Comedy's rates, it is misleading and inaccurate.

In order to make the comparisons between rates charged to cable and those charged to HSD operators, the Packagers took a "sample HSD rate" and compared it with an average cable rate. This method of comparison is replete with inaccuracies and qualifications. There is no such thing as an average cable rate or a sample HSD rate for Comedy, in part because the rates charged to different distributors are based upon the varied characteristics of such distributors.

Specifically, Comedy's rates are based upon several permissible factors which are set forth in the Cable Act and Commission rules, such as subscriber penetration and overall distribution as well as other factors such as geographic markets. The higher the penetration and distribution, the lower the rate, and this applies across the board regardless of whether Comedy's programming is distributed to a cable operator or an HSD operator. For example, those distributors that offer Comedy on the basic tier of service will pay a specified rate. However, a distributor that places Comedy on a level of service other than the basic service tier, and thereby offers Comedy fewer subscribers, will

have to pay a "tier assessment" above the basic rate. This tiering structure is blind to the type of operator distributing Comedy's programming; it merely bases the rates upon the subscriber penetration obtained by the distributor.² In addition to this tiering assessment, there also are different cost factors associated with the sale and delivery of programming to different distributors, such as marketing efficiencies and other considerations that may account for any rate differentials.

Partners also responds to the allegations made by NRTC in its initial comments that its distribution rate for Comedy was increased "significantly" by Partners. This assertion is simply incorrect; Comedy's rates to NRTC have not changed since the passage of the Cable Act. NRTC is paying the same rate now as it did prior to the Cable Act.

B. Exclusivity

In its comments, NRTC claimed that "Time Warner and Viacom entered into exclusive DBS program distribution arrangements ... for the specific purposes of blocking access to [their] programming ... by NRTC and Hughes at 101°." See Comments of NRTC at 23. With respect to Partners' Comedy service (which is owned equally by Viacom and Time Warner) these allegations are untrue. Partners entered into an agreement with USSB for DBS distribution

² To the extent there may be differentials in the rates that different distributors pay, these differences would appear to be dramatic on a percentage basis (which is the basis of comparison used by the Packagers) due to the fact that Comedy's rates are among the lowest charged by any programming service. Because of its initial low rate, even a one or two cent differential would appear to be dramatic on a percentage basis.

for legitimate business reasons, and there is nothing improper about this arrangement. Partners met with DirecTV, a competitor to USSB, and decided that DirecTV did not offer Partners as attractive an arrangement as USSB did. Thus, Partners determined that it would be in the best interests of its business to enter into an agreement with USSB. In addition, the USSB exclusivity agreement does not bar consumers from obtaining Partners' programming; any consumer owning the appropriate technology can obtain Comedy from USSB.

III. CONCLUSION

Partners has submitted these reply comments to apprise the Commission of the inaccurate statements made in the initial comments of the Packagers and NRTC. Based upon the foregoing, it is apparent that none of the commenters mentioned has a valid complaint against Partners for unlawful or discriminatory treatment.

Respectfully submitted,

COMEDY PARTNERS

By: Marla P. Spindel
Benjamin J. Griffin
Marla P. Spindel
REED SMITH SHAW & McCLAY
1200 18th Street, N.W.
Washington, D.C. 20036
(202) 457-6100

Its Attorneys

July 29, 1994

CERTIFICATE OF SERVICE

I, Marla P. Spindel, hereby certify that on this 29th day of July, 1994, a true and correct copy of the foregoing "**REPLY COMMENTS OF COMEDY PARTNERS**" was sent via U.S. first-class mail, postage prepaid, or hand delivered, to the names on the attached list.

Marla P. Spindel
Marla P. Spindel

* By Hand

Andrew R. Paul
Senior Vice President
Satellite Broadcasting &
Communications
225 Reinekers Lane, Ste. 600
Alexandria, VA 22314

M. Robert Sutherland, Esq.
Michael A. Tanner, Esq.
BELLSOUTH TELECOMMUNICATIONS, INC.
4300 Southern Bell Center
675 W. Peachtree Street
Atlanta, GA 30375

James T. Hannon, Esq.
U S WEST COMMUNICATIONS, INC.
1020 19th Street, N.W.
Suite 700
Washington, DC 20036

Gary M. Epstein, Esq.
James H. Barker, Esq.
Attorneys for DirecTv, Inc.
LATHAM & WATKINS
1001 Pennsylvania Ave., N.W., Ste 130
Washington, DC 20004

Paul J. Sinderbrand, Esq.
William W. Huber, Esq.
Attorneys for THE WIRELESS CABLE
ASSOCIATION INTERNATIONAL, INC.
888 Sixteenth Street, N.W., Ste. 610
Washington, DC 20006-4103

Michael E. Glover, Esq.
Betsy L. Anderson, Esq.
BELL ATLANTIC
1710 H Street, N.W.
Washington, DC 20006

John F. Raposa, HQE03J27
GTE Service Corporation
P.O.Box 152092
Irving, TX 75015-2092

Gail L. Polivy, Esq.
Attorney for GTE Service Corp.
1850 M Street, N.W.
Suite 1200
Washington, DC 20036

Benjamin J. Griffin, Esq. *
Marla P. Spindel, Esq.
Attorneys for Home Box Office
REED SMITH SHAW & MCCLAY
1200 18th Street, N.W.
Washington, DC 20036

John B. Richards, Esq.
Attorney for National Rural Telecom-
munications Cooperative
Keller and Heckerman
1001 G Street, N.W., Suite 500 West
Washington, DC 20001

Henry M. Rivera, Esq.
Jay S. Newman, Esq.
Attys for LIBERTY CABLE COMPANY, INC.
Ginsburg Feldman and Bress, Chartered
1250 Connecticut Avenue, N.W.
Washington, DC 20036

Daniel L. Brenner, Esq.
Loretta P. Polk, Esq.
Counsel for the National Cable
Television Association, Inc.
1724 Massachusetts Avenue, N.W.
Washington, DC 20036

Robert L. Hoegle, Esq.
Timothy J. Fitzgibbon, Esq.
Attys for LIBERTY MEDIA CORPORATION
Carter, Ledyard & Milburn
1350 I Street, N.W., Suite 870
Washington, DC 20005

Michael Hammer, Esq.
Laurence D. Atlas, Esq.
Attys for Tele-Communications, Inc.
WILLKIE FARR & GALLAGHER
1155 21st Street, N.W, Suite 600
Washington, DC 20036-3384

Bertram W. Carp, Esq.
Turner Broadcasting System, Inc.
820 First Street, N.E.
Washington, DC 20002

Bruce D. Sokler, Esq.
Attys for Turner Broadcasting System
Mintz, Levin, Cohn, Ferris, Glovsky
and Popeo, P.C.
701 Pennsylvania Ave., N.W., Ste 900
Washington, DC 20004-2608

Brian Conboy, Esq.
Willkie Farr & Gallagher
Attys for TIME WARNER CABLE
Three Lafayette Center
1155 21st Street, N.W.
Washington, DC 20036

Robert D. Joffe, Esq.
Attys for TIME WARNER CABLE
Cravath, Swaine & Moore
Worldwide Plaza
825 Eighth Avenue
New York, NY 10019

Edward R. Wholl, Esq.
Campbell L. Ayling, Esq.
The NYNEX Telephone Companies
120 Bloomingdale Road
White Plains, NY 10605

Mark C. Ellison, Esq.
Attys for Consumer Satellite Systems
Programmers Clearing House, Inc.
Hardy & Ellison, P.C.
9306 Old Keene Mill Rod
Burke, VA 22015

Michael R. Gardner, Esq.
Charles R. Milkis, Esq.
William J. Gildea, III, Esq.
Attys for CellularVision of New York
1150 Connecticut Ave., N.W., Ste. 710
Washington, DC 20036

Marilyn Cohen
Executive Director
Foundation for Family TV
College of Education
222 Miller Hall, Mail Stop DW-12
Seattle, WA 98195

Benjamin J. Griffin, Esq. *
Laura Holt Jones, Esq.
Attorneys for Primestar Partners, L.P
Reed Smith Shaw & McClay
1200 18th Street, N.W.
Washington, DC 20036